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NO. 85-1791
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

DARLENE K. THOMAS,
Petitioner

v.

CRAIG WILLIS, FRANCIS N. HAMBLIN, ROBERT STORCH, CHARLES DE SANTO, JOHN ZAHARIS, HUGH WILLIAMSON, CHARLES KENT, PAUL KLENS, AND THE ASSOCIATION OF PENNSYLVANIA STATE COLLEGE AND UNIVERSITY FACULTIES,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS WILLIS, HAMBLIN, STORCH, DE SANTO, ZAHARIS, AND WILLIAMSON IN OPPOSITION

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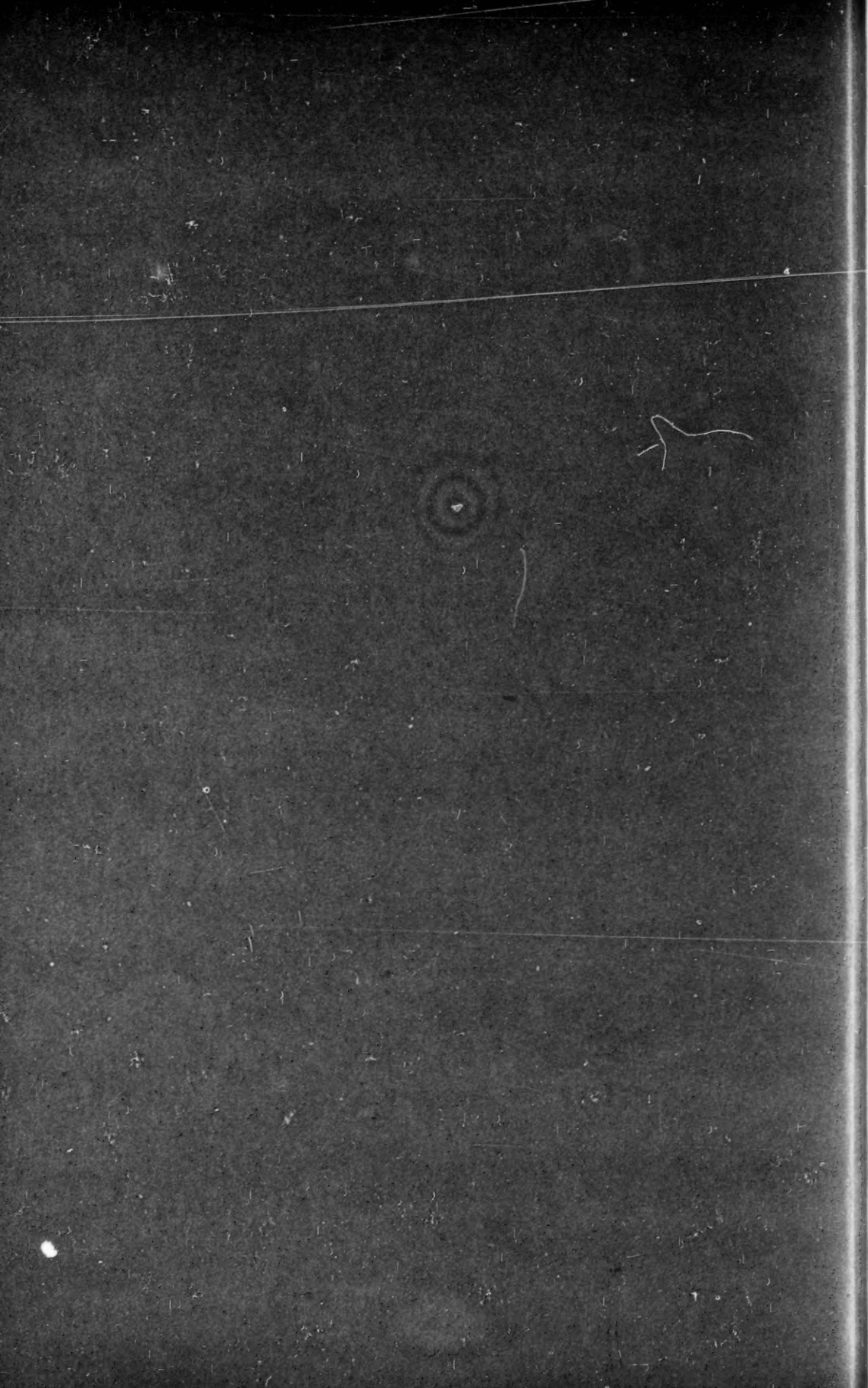

QUESTION PRESENTED

Whether the ruling announced in Wilson v. Garcia, No. 83-2146 (April 17, 1985), is applicable to petitioner's civil rights action, which was filed in 1984 and asserted a cause of action which arose in 1980.

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PARTIES

All parties appear on the caption of the petition for writ of certiorari.

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OPINIONS BELOW

The opinion of the District Court and the judgment order of the Court of Appeals appear in the appendix of the Petition for Writ of Certiorari.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1). The decision of the Court of Appeals for which review is sought is dated February 20, 1986. The petition for writ of certiorari was docketed in this Court on May 1, 1986.

STATEMENT OF THE CASE

Respondent Francis Hamblin, then the president of Lock Haven State College in Pennsylvania, directed that petitioner Darlene Thomas be dismissed from her employment as a professor on September 4, 1980. Four years later, on February 6, 1984, Thomas filed a federal civil rights action challenging her dismissal. Named as defendants were various officials of Lock Haven State University (the successor to Lock Haven State College), the Association of Pennsylvania State College and University Faculties, and two of its officers. The gravamen of Thomas' suit was her claim that her dismissal had violated her rights under the First and Fourteenth Amendments to the United States Constitution.

The respondents moved to dismiss the complaint, asserting, inter alia, that the suit was time-barred. The district court, however, ruled that the suit was timely. Respondents then filed answers in which they again asserted the statute of limitations defense.

On April 17, 1985, while motions for summary judgment were pending before the district court, this Court decided Wilson v. Garcia, No. 83-2146 (April 17, 1985). Before the respondents were able to address the impact of Wilson v. Garcia, the United States Magistrate to whom the motions had been referred issued a report in which he recommended that the respondents be granted summary judgment with respect to all but one of Thomas' claims.

In their exceptions to the magistrate's report, the University respondents contended, inter alia, that they were entitled to judgment on the remaining claim by virtue of the decision in Wilson v. Garcia. In addition, they filed a supplemental motion for summary judgment in which they reasserted that the entire action was barred by the statute of limitations. Following new briefing directed to this issue, the district court held that the suit was time-barred and entered judgment in favor of the respondents.

Thomas appealed to the United States Court of Appeals for the Third Circuit, which affirmed the district court by judgment order dated February 20, 1986.

Thomas' petition for a writ of certiorari was docketed in this Court on May 1, 1986. By letter dated May 19, 1986, the Clerk granted respondents a thirty-day extension of time within which to file this brief in opposition.

ARGUMENT

In Wilson v. Garcia, No. 83-2146 (April 17, 1985), this Court held that the statute of limitations for Section 1983 actions is that statute which the forum state applies to personal injury actions. Petitioner conceded below, and does not contend to the contrary in this Court, that if the ruling in Wilson applies to this action, the action is untimely. Thus, the only issue presented is whether the courts below were correct in concluding that Wilson should be applied to this action.

In Chevron Oil v. Huson, 404 U.S. 97 (1971), this Court developed a three-factor test for determining the retroactivity of statute of limitations rulings. A court faced with a retroactivity question must consider whether

the decision in question established a new principle of law, whether retrospective application would further the purposes of the governing rule, and whether it would be inequitable to apply the rule retroactively. 404 U.S. at 106-107. Employing this analysis, the Third Circuit has held that Wilson should be applied retroactively. Fitzgerald v. Larson, 769 F.2d 160 (3d Cir. 1985); Smith v. City of Pittsburgh, 764 F.2d 188 (3d Cir. 1985), cert. denied, No. 84-3501 (November 4, 1985).

The court of appeals found that, at the time in question, the courts in its Circuit were "thoroughly divided" on the question of which statute of limitations should apply to employment claims filed pursuant to 42 U.S.C. § 1983; that plaintiff could not reasonably have relied on receiving the

benefit of any particular limitations period; and that there was therefore no reason why Wilson should not be applied retroactively. In summarily affirming the district court's ruling in this case, the court of appeals presumably followed these decisions.

We submit that the Court of Appeals was correct. This Court granted certiorari in Wilson because of "conflict, confusion, and uncertainty" concerning the appropriate statute of limitations to apply in Section 1983 suits. Wilson, slip op. at 5. Inconsistent decisions were common not just between, but even within circuits, including the Third Circuit.[1]

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[1]The federal courts sitting in Pennsylvania had applied limitations periods ranging from six months, Clyde v. Thornburgh, 533 F.Supp. 279, 285 (E.D.Pa. 1982), to six years, Davis v. United States Steel Supply, 581 F.2d 335, 337 (3d Cir. 1978).

Petitioner argues, however, that following the Third Circuit's decision in Springfield Township v. Knoll, 699 F.2d 137 (3d Cir. 1983), she was justified in waiting four years before filing suit because that decision established a "clear past precedent," see petition at 16-17, that the applicable limitations period was six years. This argument has no merit. In Knoll, a timely petition for writ of certiorari was filed, the writ was granted and ultimately, the judgment was vacated in light of Wilson. See No. 83-1889 (April 17, 1985). Thus, at no point did Knoll constitute a "clear past precedent" on which a litigant could justifiably have relied.

The majority of circuits that have examined the issue have agreed with the Third Circuit that retroactive

application of Wilson is warranted.[2] While the 7th, 9th, and 10th Circuits have reached a contrary result,[3] that is because those courts found that the law of their respective circuits was sufficiently clear prior to Wilson that parties were entitled to rely on that law.

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[2]See Smith v. City of Pittsburgh, 764 F.2d 188 (3d Cir. 1985), cert. denied, No. 84-3501 (November 4, 1985); Gates v. Spinks, 771 F.2d 916 (5th Cir. 1986), cert. denied, No. 85-1215 (March 10, 1986) (applying Wilson retroactivity without discussion); Mulligan v. Hazard, 777 F.2d 340 (6th Cir. 1985), cert. denied, No. 85-1641 (June 9, 1986); Wycoff v. Menke, 773 F.2d 983 (8th Cir. 1985); Jones v. Preuitt and Mauldin, 763 F.2d 1250 (11th Cir. 1985), cert. denied, No. 85-794 (January 27, 1986).

[3]See Anton v. Lehpamer, 787 F.2d 1141, (7th Cir. 1986); Jones v. Bechtel, 788 F.2d 571 (9th Cir. 1986); and Jackson v. City of Bloomfield, 731 F.2d 652 (10th Cir. 1984).

There is no need for this Court to determine whether the law in the Third Circuit was sufficiently clear before Wilson to have induced reliance on the part of litigants and to defeat retroactive application of the decision in Wilson. That task should be left to the courts of appeals, who are clearly in the best position to assess the state of the law in their respective circuits. This Court established the parameters of the inquiry in Chevron Oil, and there is no indication that the courts of appeals are incapable of applying that decision in a consistent fashion.

CONCLUSION

For the reasons set forth above, the writ should be denied.

Respectfully submitted,

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